

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Raymond Smith,

2:15-cv-0565-JAD-GWF

Plaintiff

V.

Accredited Home Lenders, et al.,

[ECF No. 27]

## Defendants

## **Order Denying Motion for Default Judgment**

10 Little has been done in this two-year-old case. On July 6, 2017, the Clerk of Court notified  
11 plaintiff Raymond Smith that “[i]f no action is taken in this case by 8/5/17, the court shall enter an  
12 order of dismissal for want of prosecution.”<sup>1</sup> One day before that deadline, Smith filed a motion for  
13 default judgment against non-appearing defendant Accredited Home Lenders.<sup>2</sup>

14 Plaintiff skipped a required step in the default-judgment process. As the Ninth Circuit Court  
15 of Appeals explained in *Eitel v. McCool*, Rule 55 requires a “two-step process” consisting of: FIRST  
16 asking the Clerk of Court to enter default against the non-answering defendant; and then SECOND,  
17 after the clerk has entered default, filing a motion (properly supported by a memorandum of points  
18 and authorities<sup>3</sup>) asking the judge to enter default *judgment*.<sup>4</sup> Because no default against Accredited  
19 has been requested or entered, plaintiff’s request for a default *judgment* is not ripe.

20 Even if the plaintiff had first asked the clerk to enter default, this motion for default judgment  
21 would be denied. Before the court can grant a request for default judgment, the court must evaluate

<sup>1</sup> ECF No. 26.

<sup>2</sup> ECF No. 27.

<sup>3</sup> L.R. 7-2(a).

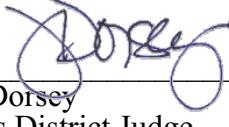
<sup>4</sup> See *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (“Eitel apparently fails to understand the two-step process required by Rule 55.”); accord *Symantec Corp. v. Global Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009) (noting that Rules 55(a) and (b) provide a two-step process for obtaining a default judgment).

1 several factors including: "(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's  
2 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action;  
3 (5) the possibility of a dispute concerning material facts; (6) whether the default was due to  
4 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring  
5 decisions on the merits."<sup>5</sup> Plaintiff has not addressed these factors at all, let alone demonstrated why  
6 they favor default judgment here. Plaintiff is cautioned that, if is able to obtain the entry of default  
7 against Accredited and he wants to renew his request for a default judgment, he must provide a  
8 detailed analysis of the factors listed above and how they support a default judgment against  
9 Accredited.

10 **ORDER**

11 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Default Judgment [ECF  
12 **No. 27**] is **DENIED**. If plaintiff has not obtained default against Accredited and filed a proper  
13 motion for default judgment by August 30, 2017, this case will be dismissed for want of prosecution.

14 Dated this 9th day of August, 2017

15   
16 Jennifer A. Dorsey  
17 United States District Judge

28 <sup>5</sup> *Eitel*, 782 F.2d at 1471-72.